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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,461	04/12/2004	Richard G. Kleker	RK002PA	4638
46055	7590	11/22/2006	EXAMINER	
RONALD ROHDE			PERRIN, JOSEPH L	
20 DESCANSO DRIVE, SUITE 1215			ART UNIT	
SAN JOSE, CA 95134			PAPER NUMBER	

1746

DATE MAILED: 11/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,461

Applicant(s)

KLEKER, RICHARD G.

Examiner

Joseph L. Perrin, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 21 November 2005 have been fully considered but they are not fully persuasive.
2. Re claims 1-26, the obviousness-type double patenting rejection has been overcome by the terminal disclaimer filed on 21 November 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of co-pending application 10/417,045 (now U.S. Patent No. 7,060,106), which has been reviewed and is accepted. The terminal disclaimer has been recorded.
3. Re claim 23, applicant's amendment has rendered the §102 rejection over TODD-REEVE moot.
4. Re the §103 rejection of claims 1-4, 10-12, 17-19 & 24 over TODD-REEVE and O'BRIEN, applicant argues that TODD-REEVE teaches away from simultaneous fluid flow. This is not persuasive because the configuration is fully capable of performing the claimed intended use. Simply because TODD-REEVE may disclose an alternative operation of the nozzles does not mean structure cannot perform such intended use. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Moreover, regarding the intended use of the spray nozzles it has been held

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that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The Examiner maintains the position that the apparatus of TODD-REEVE is fully capable of performing such intended use. The Examiner further notes that it is well settled that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device *is*, not what a device *does*.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original) Even if, *arguendo*, one were to construe the TODD-REEVE reference as not explicitly disclosing the capability of operating simultaneously, O’BRIEN clearly discloses simultaneous operation and either intended use of the apparatus would be well within the level and knowledge of one having ordinary skill in the art.

5. Applicant further argues that TODD-REEVE cannot move vertically because of a wired guard to separate the rotating lower spray bar from the clothing, this is not persuasive because one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

6. Applicant further individually argues that O'BRIEN does not teach or suggest the claimed intended use. This is not persuasive for the reasons already given regarding attacking the references individually and intended use.

7. For at least the foregoing reasons, the §103 rejection of claims 1-4, 10-12, 17-19 & 24 over TODD-REEVE and O'BRIEN is maintained. Applicant is urged to amend the claims to positively claim the structural limitations of the claimed invention rather than rely on the intended use of the apparatus. As noted above, it is well settled that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function (*In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959)) and further that "apparatus claims cover what a device *is*, not what a device *does*" (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original)).

8. Re the §103 rejection of claims 5-9, 13-16, 20-22 & 25-26 over TODD-REEVE, O'BRIEN & FITZPATRICK, applicant argues that the rejection over TODD-REEVE and O'BRIEN above is obviated and, therefore, the rejection over TODD-REEVE, O'BRIEN & FITZPATRICK is also obviated. This is not persuasive because the rejection over TODD-REEVE & O'BRIEN is maintained for reasons given above.

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the position is taken that it would be well within the level and skill of one having ordinary skill in the art at the time the invention was made to substitute one nozzle assembly for another to arrive at applicant's claimed invention. Moreover, there would be a reasonable expectation of success in substituting essentially horizontally traversing nozzles on both sides of an article (i.e. top side and bottom side of TODD-REEVE) for vertically traversing nozzles on both sides of an article in order to realize the readily evident advantages of close range, direct application of fluids and vapors to the entire surface of the garments to be cleaned, particularly since the difference appears to be simply shifting from a horizontal traverse to a vertical traverse which is clearly within the level and knowledge of one having ordinary skill in the art.

Specification

10. The amendment filed 21 November 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

11. The multiple "at close range" descriptions are newly introduced and not adequately defined in the original disclosure as filed and therefore are considered new matter.

12. Similarly regarding paragraph [0029], while nozzles are disclosed the newly introduced "orifices, such as nozzles" is newly introduced and appears to be an improper attempt to broaden the scope of the originally disclosed "nozzles" and therefore is considered new matter.

13. Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

14. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

15. Claims 1-17 & 23-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's original disclosure is silent with respect to blowing air "simultaneously" through a pair of arms and therefore such language is considered new matter.

16. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

17. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 recites the limitation "the manifold" in line 6. There

is insufficient antecedent basis for this limitation in the claim. This rejection is the result of the removal of the "manifold" limitation line 3, however since a manifold is still positively recited in claim 6 the claim will be treated accordingly. The Examiner notes that complete removal of the "manifold" recitation would appear to read on any conventional rotary drum drier with condenser which would clearly include structure readable on applicant's broadly recited means plus function language since conventional driers with condensers include a means for supporting garments (i.e. rotary drum), means for blowing air and recirculating air (i.e. fan/blower and recirculation duct), and means for removing water (heater and/or condenser).

Claim Rejections - 35 USC § 103

18. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

19. Claims 1-4, 10-12, 17-19 & 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over TODD-REEVE in view of O'BRIEN. This rejection is repeated from the previous Office action.

20. Claims 5-9, 13-16, 20-22 & 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over TODD-REEVE and O'BRIEN as applied above, and further in view of FITZPATRICK. This rejection is repeated from the previous Office action.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

DE 2035540 to LEPPER which explicitly teaches the level and knowledge of one having ordinary skill in the cleaning art of washing, rinsing or drying garments by spraying on both sides of the garment either "continuously or pulsating" and adjusting the distance between the spraying means and the garment to provide a "more or less intensive wash, rinsing or a drying effect on the kind of fabrics of the laundry";

U.S. Patent No. 6,960,282 to BEZAMA *et al.*, which discloses a drying cabinet with means for supporting the article to be dried and vertically traversing horizontally extending nozzles on both sides of article while blowing air to effect drying of the article;

U.S. Patent No. 5,887,456 to TANIGAWA *et al.* & U.S. Patent No. 5,207,764 to AKABANE *et al.*, which disclose conventional driers with condensers; and

U.S. Patent No. 4,173,077 to BIRKE *et al.*, which discloses a process for drying fabric with plural horizontally extended arms of a drying manifold, blowing air on both sides of the fabric, and relative vertical traversing between the fabric and the horizontal arms.

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

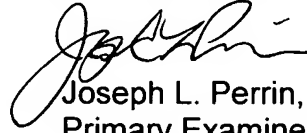
23. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1746

JLP